

**ANNEX 3      Equality Impact Assessment - Relevance to Equality Duties**

## Equality Impact Assessment - Relevance to Equality Duties

The EIA should be used to identify likely impacts on:

- disability
- race
- sex
- gender (including gender identity)
- age
- religion or belief
- sexual orientation
- pregnancy and maternity

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed.

1.1 Proposed new Solicitors (Disciplinary Proceedings) Rules to replace the Solicitors (Disciplinary Proceedings) Rules 2007 (“the 2007 Rules”) and to amend applicable provisions of the Solicitors Disciplinary Tribunal (Appeals and Amendments) Rules 2011 (“the 2011 Appeal Rules”).

2. Individual responsible for completing the Equality Impact Assessment.

2.1 Geraldine Newbold, Clerk, Solicitors Disciplinary Tribunal.

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

3.1 The Tribunal adjudicates upon alleged breaches of the rules and regulations applicable to solicitors and their firms, including the Solicitors’ Code of Conduct 2007, the SRA Code of Conduct 2011, and the SRA Principles 2011. The Tribunal also adjudicates upon the alleged misconduct of registered foreign lawyers and persons employed by solicitors. It also decides applications by former solicitors for restoration to the Roll and by indefinitely suspended solicitors for determination of suspension.

3.2 The 2007 Rules govern the procedure in relation to such applications. The proposed new Solicitors (Disciplinary Proceedings) Rules replace the 2007 Rules in order to provide greater clarity as to the Tribunal’s procedures, and include additional provisions that reflect changes to the Tribunal’s practices since 2007. The Tribunal consulted on whether it should use the criminal or civil standard of proof. Apart from when considering appeals against internal decisions of the Solicitors Regulation

Authority, the Tribunal currently applies the criminal standard of proof.

4. What existing sources of information will you use to help you identify the likely equality impacts on different groups of people?

4.1 The two main groups of people that are involved in Tribunal proceedings are the applicants and the respondents. The majority of applications are made by the Solicitors Regulation Authority and the majority of respondents are solicitors or their employees. There is no existing source of information that will assist in identifying the likely equality impacts on different groups of people.

4.2 The Tribunal considered the following sources of information:

- Lord Ouseley’s “Independent Review into Disproportionate Regulatory Outcomes for Black and Minority Ethnic Solicitors” (2008)
- Pearn Kandola’s “Commissioned research into issues of disproportionality” (2010)
- Professor Gus John’s Independent Comparative Case Review (2014)
- Mapping advantages and disadvantages: Diversity in the legal profession in England and Wales” (SRA- 2017)
- SRA’s Annual Review 2016/17
- The equality and diversity information held by the Tribunal
- The responses received to the consultation

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people? If so what are the gaps in the information and how and when do you plan to collect additional information?

5.1 As part of its consultation the Tribunal asked the question “Do you consider that any of the draft rules could result in any adverse impacts for any of those with protected characteristics under the Equality Act?” It received 21 responses. The analysis of these is set out in Annex 1.

5.2 These responses either did not identify any adverse impacts or did not set out potential impacts in relation to specific groups of people.

- 5.3 The Tribunal concluded that there was no evidence that the proposed changes would affect any one group of respondents disproportionately to any other group of respondents regardless of whether or not the respondent has a protected characteristic.
- 5.4 It is anticipated that the proposed rules will affect all groups of people in the same way as the 2007 Rules currently affect all groups of people. The decision in respect of the standard of proof will be applicable to cases against all respondents.
- 5.5 The Tribunal acknowledges that it has limited information. As set out in the initial screening assessment, respondents in Tribunal proceedings are asked to complete a questionnaire in respect of equality and diversity information. In 2018 no responses were received.
- 5.6 The Tribunal is aware that the SRA intends to publish a report on its disciplinary track record. It is understood that this report will bring together data about the cases that the SRA has referred to the Tribunal, including issues around diversity. The Tribunal will carefully consider the contents of this report when published.

6. Having analysed the initial and additional sources of information, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of which benefits from the positive impacts and the evidence and analysis used to identify them.

- 6.1 The proposed new rules provide clarity in respect of the Tribunal's practice and incorporate provisions previously contained in the Standard Directions and Practice Directions. This should make the requirements easier to understand for all applicants and respondents.
- 6.2 The Tribunal has considered the responses to the consultation but has not identified any impact (positive or negative) of the proposed changes as part of the consultation process. The Tribunal has considered the concerns expressed in the responses to the consultation but considers that these are related to the areas of practice of specific groups rather than the impact of the proposed changes themselves.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

- 7.1 The Tribunal has considered the responses to the consultation but has not identified any additional work that can be done to promote equality of opportunity. The proposed rules make provisions for directions in relation to Special Measures and such applications will be considered on a case by case basis.
- 7.2 The Tribunal has considered the concerns expressed in the responses to the consultation but considers that these are related to the areas of practice of specific groups rather than the impact of the proposed changes themselves.
- 7.3 The Tribunal does not investigate matters, it adjudicates upon allegations of misconduct in applications made to it. The Tribunal therefore has no influence over the matters it receives. It will continue to deal with all parties before it in a fair, transparent and open manner that promotes equality of opportunity.

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

- 8.1 There is no such evidence at this stage.
- 8.2 The Tribunal has considered the responses to the consultation but has not identified any adverse equality impact of the proposed changes as part of the consultation process. The Tribunal has considered the concerns expressed in the responses to the consultation but considers that these are related to the areas of practice of specific groups rather than the impact of the proposed changes themselves.

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

- 9.1 The proposed new rules provide clarity in respect of the Tribunal's practice and incorporate provisions previously contained in the Standard Directions and Practice Directions. This should make the requirements clearer for all applicants and respondents.
- 9.2 The Tribunal's standard of proof will change to the civil standard under these proposals. This means that the allegations made against all respondents will need to be proved on the balance of probabilities rather than beyond reasonable doubt. Whilst concerns have been raised that those with a protected characteristic are less able to afford representation before the Tribunal the Tribunal does not consider that

there will be an equality impact on any specific group of people. The Tribunal process and procedure will remain the same, the difference will be at a substantive hearing in terms of the standard of proof applied by the Tribunal.

9.3 The Tribunal has considered the responses to the consultation but has not identified any impact (positive or negative) of the proposed changes as part of the consultation process. The Tribunal has considered the concerns expressed in the responses to the consultation but considers that these are related to the areas of practice of specific groups rather than the impact of the proposed changes themselves.

9.4 The nature of the proposed amendments are such that any disparate impact looks very unlikely. The provisions apply equally to all and there is no basis to surmise those sharing any protected characteristic would be in any way disadvantaged. Each protected characteristic has been considered individually and the conclusions are set out below.

9.5 Protected Characteristic – Disability

9.5.1 The proposed rules would replace the existing rules and update them. It is not anticipated that the proposed rules would affect people disproportionately because of issues of disability. The position will be monitored when the new rules are introduced. If any issues in respect of protected characteristics are identified by the Tribunal then these will be considered and an action plan developed.

9.6 Protected Characteristic – Gender (including gender identity)

9.6.1 The proposed rules would replace the existing rules and update them. It is not anticipated that the proposed rules would affect people disproportionately because of issues of gender. The position will be monitored when the new rules are introduced. If any issues in respect of protected characteristics are identified by the Tribunal then these will be considered and an action plan developed.

9.7 Protected Characteristic – Race

9.7.1 The proposed rules would replace the existing rules and update them. It is not anticipated that the proposed rules would affect people disproportionately because of issues of gender. The position will be monitored when the new rules are introduced. If any issues in respect of protected characteristics are identified by the Tribunal then these will be considered and an action plan developed.

9.8 Protected Characteristic – Age

9.8.1 The age of those involved in proceedings in the Tribunal varies. The proposed rules

would replace the existing rules and update them. It is not anticipated that the proposed rules would affect people disproportionately because of issues of age. The position will be monitored when the new rules are introduced. If any issues in respect of protected characteristics are identified by the Tribunal then these will be considered and an action plan developed.

#### 9.9 Protected Characteristic – Religion and Belief

9.9.1 The proposed rules would replace the existing rules and update them. It is not anticipated that the proposed rules would affect people disproportionately because of issues of religion and belief. The position will be monitored when the new rules are introduced. If any issues in respect of protected characteristics are identified by the Tribunal then these will be considered and an action plan developed.

#### 9.10 Protected Characteristic – Sexual Orientation

9.10.1 The proposed rules would replace the existing rules and update them. It is not anticipated that the proposed rules would affect people disproportionately because of issues of sexual orientation. The position will be monitored when the new rules are introduced. If any issues in respect of protected characteristics are identified by the Tribunal then these will be considered and an action plan developed.

#### 9.11 Protected Characteristic – Pregnancy and Maternity

9.11.1 The proposed rules would replace the existing rules and update them. It is not anticipated that the proposed rules would affect people disproportionately because of issues of pregnancy and maternity. The position will be monitored when the new rules are introduced. If any issues in respect of protected characteristics are identified by the Tribunal then these will be considered and an action plan developed.

### Summary

9.12 At this stage no equality impacts have been identified. A number of concerns were expressed as part of the response to the consultation and the Tribunal has considered these but does not consider that these concerns are directly related to the proposed new rules.

#### 10. Is a full Equality Impact Assessment Required?

10.1 This is not considered necessary.

11. Even if a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

11.1 This Equality Impact Assessment has been reviewed by the Policy Committee of the Solicitors Disciplinary Tribunal and signed off by the President of the Tribunal on its behalf:

A handwritten signature in black ink, appearing to read 'Edward Nally', with a stylized flourish at the end.

Signed

Edward Nally, President of the Solicitors Disciplinary Tribunal

Dated            01 April 2019